

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Apr 07, 2023**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

v.

VASSILY ANTHONY THOMPSON,

Defendant-Petitioner.

NO: 2:16-CR-0145-TOR-1

ORDER DENYING DEFENDANT'S  
28 U.S.C. § 2255 REQUEST TO SET  
ASIDE RESTITUTION JUDGMENT

BEFORE THE COURT is Defendant's 28 U.S.C. § 2255 Request to Set  
Aside Restitution Judgment. ECF No. 594. Defendant is now proceeding *pro se*.  
The Court has reviewed the record and files herein and is fully informed. For the  
reasons discussed below, the Court denies Defendant's Motion.

**BACKGROUND**

The lengthy history of this case is unnecessary to the Court's ruling on this  
motion. The Ninth Circuit reversed and remanded this Court's forfeiture money

ORDER DENYING DEFENDANT'S 28 U.S.C. § 2255 REQUEST TO SET  
ASIDE RESTITUTION JUDGMENT ~ 1

1 judgment explaining that:

2 On remand, the district court should make findings denoting  
3 approximately how much of the proceeds of the crime came to rest  
4 with each of the three conspirators, Thompson, Fincher, and Nixon.  
5 Though no forfeiture judgment was issued against Nixon, neither  
6 Thompson nor Fincher can be subjected to forfeiture of amounts  
7 that came to rest with Nixon, since those amounts were not  
8 proceeds that came to rest with them. The forfeiture judgments  
9 must be separate, for the approximate separate amounts that came  
10 to rest with each of them after the loot was divided among the  
11 swindlers.

12 *United States v. Thompson*, 990 F.3d 680, 691-92 (9th Cir. 2021).

13 After briefing by the parties, the Court entered an Amended Judgment on  
14 December 2, 2022 providing for, *inter alia*, a money judgment for forfeiture of  
15 \$279,117.15. ECF No. 574.

16 On March 10, 2023, Defendant filed the instant motion. In essence, he  
17 contends that “Jason Miller stands to be at least 50% liable for the use of funds”  
18 because Mr. Miller and Defendant Thompson deposited their respective funds into  
19 an account that was comingled. *See* ECF No. 594 at 3. Defendant contends his  
20 attorney, Stephen Hormel, made errors and omissions and misstated the facts.

## 21 DISCUSSION

### 22 A. Motion to Vacate, Set Aside or Correct Sentence

23 The Court first considers Defendant’s motion pursuant to Rule 4 of the  
24 Rules Governing Section 2255 Proceedings. Rule 4(b) provides that the Court

1 “must promptly examine [the motion]. If it plainly appears from the motion, any  
2 attached exhibits, and the record of prior proceedings that the moving party is not  
3 entitled to relief, the judge must dismiss the motion . . .”

4 The issues raised do not require an evidentiary hearing. *See* Rule 8, Rules—  
5 Section 2255 Proceedings. The transcripts, records and materials filed in this  
6 proceeding adequately document the issues for resolution.

7 Here, Defendant is plainly not entitled to relief.

8 **1. Ineffective Assistance of Counsel**

9 While Defendant claims his attorney made errors and omissions and  
10 misstated the facts, he never pleads a claim of ineffective assistance of counsel.  
11 Defendant has not included any facts or evidence to support this contention and  
12 equally important, has failed to show prejudice.

13 Effective assistance of counsel is analyzed pursuant to the doctrine set forth  
14 in *Strickland v. Washington*, 466 U.S. 668 (1984). According to *Strickland*,  
15 Petitioner bears the burden of establishing two components to an ineffectiveness  
16 inquiry. First, the representation must fall “below an objective standard of  
17 reasonableness.” 466 U.S. at 687–88. Courts scrutinizing the reasonableness of an  
18 attorney’s conduct must examine counsel’s “overall performance,” both before and  
19 at trial, and must be highly deferential to the attorney’s judgments. *United States*  
20 *v. Quintero-Barraza*, 78 F.3d 1344, 1347–48 (9th Cir. 1995) (quoting *Strickland*,

1 466 U.S. at 688–89). In fact, there exists a “strong presumption that counsel  
2 ‘rendered adequate assistance and made all significant decisions in the exercise of  
3 reasonable professional judgment.’” *Id.* (citation omitted).

4 If the petitioner satisfies the first prong, he must then establish that there is  
5 “a reasonable probability that, but for counsel’s unprofessional errors, the result of  
6 the proceeding would have been different. A reasonable probability is a  
7 probability sufficient to undermine confidence in the outcome.” *Quintero-*  
8 *Barraza*, 78 F.3d at 1347 (quoting *Strickland*, 466 U.S. at 694).

9 Defendant has shown neither of the two prongs required by *Strickland*.  
10 Furthermore, just because another individual deposited money into the same  
11 account as Defendant, does not mean that Defendant is not liable for the forfeiture  
12 of those monies according to *Honeycutt v. United States*, 137 S. Ct. 1626 (2017).

13 Accordingly, this contention is denied.

## 14 **2. Failure to Show the Stipulated Forfeiture is Error**

15 While Defendant claims another should be “50% liable”, he has not shown  
16 that the amount forfeited from him in the money judgment is erroneous under  
17 *Honeycutt*.

18 Accordingly, this contention is denied.

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1        **B. Certificate of Appealability**

2        A petitioner seeking post-conviction relief may appeal a district court's  
3 dismissal of the court's final order in a proceeding under 28 U.S.C. § 2255 only  
4 after obtaining a certificate of appealability ("COA") from a district or circuit  
5 judge. 28 U.S.C. § 2253(c)(1)(B). A COA may issue only where the applicant has  
6 made "a substantial showing of the denial of a constitutional right." *See id.*  
7 § 2253(c)(2). To satisfy this standard, the applicant must "show that reasonable  
8 jurists could debate whether (or, for that matter, agree that) the petition should  
9 have been resolved in a different manner or that the issues presented were adequate  
10 to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S.  
11 322, 336 (2003) (internal quotation marks and citation omitted).

12        The Court concludes that Defendant is not entitled to a COA because he has  
13 not demonstrated that jurists of reason could disagree with this Court's resolution  
14 or conclude the issue presented deserves encouragement to proceed further.

15 //

16        **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 17        1. Defendant's 28 U.S.C. § 2255 Request to Set Aside Restitution Judgment,  
18        ECF No. 594, is **DENIED**.

2. The Court further certifies that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of appealability is **DENIED**.

The District Court Executive is directed to enter this Order and furnish copies to the parties, including the Defendant at: Vassily Thompson Prisoner No. 20133-085, Federal Correctional Institution, P.O. Box 1000, Butner, NC 27509.

**DATED** April 7, 2023.



*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge